IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2287 OF 2005

Mr.Dilip Anand : Petitioner

V/s.

Mr.N.N.Anand & Ors. : Respondents

...

Ms Gauri Jadhav for the petitioner.

Mr.Mohan Korde with Mr.M.G.Gawde for the respondent nos.4 to 7.

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CORAM : S.A. BOBDE, J.

October 25, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Korde for the respondents waives service of rule.

Heard by consent.

2. The petitioner has challenged the order below exh.3 passed by the Joint Charity Commissioner, Mumbai, by which the learned Joint Charity Commissioner has condoned the delay in entertaining Revision Application no.32 of 2003 under section 70A of the Bombay Public Trusts Act, 1950.

3. The respondent nos.5, 6 and 7 preferred a revision on

29.11.2003 against the order dated 27.2.2001 in Change Report no.ACC/III/3074/98. The respondent nos.5, 6 and 7 preferred the revision challenging the legality and propriety of the acceptance of the Change Report filed by the petitioner.

4. The only point raised by Ms Jadhav, the learned counsel for the petitioner, is that there is a delay of about two years and nine months which has been condoned, without there being an application for such condonation of delay. The learned counsel relied on the judgement of this Court in Ballumal A. Jaisingh v. J.J. Builders (2003) (3) Mh.L.J. 238) and an unreported judgement of a single Judge of this Court in Dr.S. Naginder Singh Bajwa v. Sardar Bavalsingh Jagatsingh & Ors. (First Appeal no.1889 of 2002) decided on 26.2.2003. It must be noted at the outset that there is no period of limitation prescribed for entertaining a a revision under section 70A of the Bombay Public Trusts Act, 1950. There is no dispute between the parties as to this.

5. The learned counsel for the petitioner, however, submitted that the revision application has been entertained without any application for condonation of delay, relying on the judgement in Ballumal's case

(supra). Strictly speaking, this argument would be untenable in view of the absence of the period of

limitation. Even otherwise, I find from the facts of the present case that the affidavit dated 29.11.2003, in fact, makes an application for condonation of delay. In para 3 of the affidavit dated 29.11.2003 sworn by one Pradeep Anand, who is the respondent no.5 herein, he has clearly stated that there is no delay in filing the revision application and further stated:-

> "However even otherwise if this Hon'ble Authority comes to the conclusion that there is any delay in filing the present application then same be ordered to be condoned and in the interest of justice the above Revision application be ordered to be admitted."

6. Mr.Korde, the learned counsel for the respondent nos.4 to 7, referred to the reply filed in July 2004 which is styled as a reply of the petitioner "TO THE APPLICATION FOR CONDONATION OF DELAY". In my view, this settles the matter. The petitioner's affidavit makes a prayer for condonation of delay, if any, and the respondents who filed the reply opposing the condonation of delay. It is, therefore, clear that they were

conscious that the petitioner was seeking condonation of delay. In my view, therefore, the judgement in Ballumal's case (supra) has no application.

7. The other judgement relied upon by the learned counsel for the petitioner in Dr.Naginder Singh's case (supra) takes the view that there is a deemed knowledge as a result of the entries in the Register and, therefore, where there is no sufficient cause shown, the delay cannot be condoned.

8. The question, therefore, boils down whether there was sufficient cause to entertain an application and whether the application has been entertained within a reasonable time from the passing of the impugned order. The impugned order discusses the delay in detail in para 8. The order against which the respondents filed a revision was passed on 27.2.2001. This was done without inquiring and admittedly without notice to the petitioner. There is nothing on record to show that the notice of the order accepting Change Report filed by the petitioner was served on the respondents. The only contention raised on behalf of the petitioner is that the respondents must be taken to have deemed knowledge. This would depend on the facts of each case.

9. It would be an entirely different matter if the

respondents had been served with a notice of the proceedings in which case it could have been taken that they were aware of the proceedings and, therefore, ought to have checked whether any change has been made in the

public trust register. There is no such evidence in this matter. The only submission made on behalf of the petitioner is that the respondents were working with the petitioner and, therefore, they must be taken to have deemed knowledge. It is difficult to accept this submission, having regard to the circumstances of the case.

10. The learned counsel for the petitioner relied on para 6 of the revision application to show that the petitioner had knowledge of the proceedings. It appears that there is a statement made in the revision application by the respondents that after coming to know about the filing of the Change Report, the respondents nos.5 to 7 filed an objection to the Change Report and have requested that without giving an opportunity to contest the Change Report, it may not be decided. Admittedly, however, the learned Joint Charity Commissioner has decided the matter without giving any notice to the respondent no.5 and without informing him of the order passed therein.

11. The learned counsel for the petitioner also brought

to my notice the judgement of a Division Bench of this Court in Automotive Research Association of India v. State of Maharashtra (2003 (1) Mh.L.J. 604) where in the absence of prescription of any specific period within which the revision may be entertained, the Division Bench

took the view that the period of three years from the date of order can always be termed as reasonable. This judgement, in my view, supports the case of the respondents.

12. In this view of the matter, I see no reason to interfere with the impugned order. It must be borne in mind that what is in issue is broadly the administration of a public trust and the matter needs to be decided on merits. Having regard to the overall circumstances of the case, I see no infirmity, jurisdictional or otherwise, in the impugned order. The petition is, therefore, dismissed. The rule is discharged. Needless to mention that the revision shall be decided on its own merits.

Sd/-

(S.A. BOBDE, J.)